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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,594	05/19/2005	Daniel Lecomte	27592-01111-US	7637
30678 7590 04/23/2010 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER				
POPHAM, JEFFREY D				
ART UNIT		PAPER NUMBER		
2437				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/530,594

Applicant(s)

LECOMTE ET AL.

Examiner

JEFFREY D. POPHAM

Art Unit

2437

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 43-69.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☒ Other: See Continuation Sheet.

/Jeffrey D Popham/
Examiner, Art Unit 2437

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the 101 rejections, there is no discussion of any means for coupling to a communication network in the application as originally filed. If the final limitation were to read "at least one item selected from the group consisting of a memory device and a playback device", it appears as though the 101 rejection would be resolved. However, including means for coupling to a communication network does not make clear that this item is a physical component, as such means are not discussed in the application as originally filed (e.g. the Examiner cannot find reference to what these means would be, such as a network interface card or the like).

Applicant argues that "Kalra fails to disclose, and actually teaches away from the claim element, "wherein a format of the modified stream corresponds to a format of the original audio stream." In determining the scope of this limitation, one must first find the scope of "format". This need not be a particular audio format, such as WAV, but rather any format of a stream. Paragraph 49 of the specification states that "the original stream 101 can be directly in digital form 111 or in analog form 11. In the latter instance analog stream 11 is converted by a coder (not shown) into digital format 111." As one can see, the format of a stream can be specified as digital or analog. Kalra is directed to taking as input an original digital stream and providing base and additive digital streams. While Kalra may provide additional data, remove data, modify data, and the like in creation of the base and additive streams, the streams are still digital. This is clearly seen in column 3, line 66 to column 4, line 2, for example, stating that "FIG. 1 illustrates a transcoder 10 according to the present invention that converts standard digital multimedia data 12 into what will be called adaptive (or scalable) digital streams, such as adaptive digital stream 14". As one can see, Kalra clearly teaches that "a format of the modified stream corresponds to a format of the original audio stream" as they are both in digital form.

Applicant also argues that "In other words, the Office Action is understood as reciting that Kalra fails to disclose at least the elements of Claim 47". However, no such recitation was provided. As the combination used to reject claim 44 in the final office action is Kalra in view of Buxton, the dependent claim need not state what each reference teaches or does not teach, but rather, as both references are already within the combination, either reference can be shown to teach the limitation, even if the other reference also teaches that limitation, or portions thereof.

Applicant argues that "In order to address what is recited in Claim 47, Buxton would have to establish that "a data profile of the target equipment," which has been accessed, "includes an identification of rights of a user to access content of the original audio stream." These passages of Buxton fail to do so (and Applicants have found no other passages, in either Kalra or Buxton, that would address this)." It is first noted that Kalra has already been shown to teach "that transmitting at least a subset of the complementary information to the target equipment comprises accessing a data profile of the target equipment; and determining, based on the data profile, the subset of the complementary information to be transmitted to the target equipment" as in claim 44, and which has not been argued. As one can see, Kalra teaches accessing a data profile and determining, based on this data profile, the subset of complementary information to be transmitted. Therefore, this data profile is already provided within the combination. What Buxton was cited as teaching is that the data profile, that is already within Kalra in the combination, and is already used in determining the subset of complementary information to be transmitted to the target equipment, includes, as characteristics of the user device.

Applicant goes on to argue that "the only methods discussed in Buxton involves the entry of user data (PIN or access code, for example, for user identification), rather than accessing of a profile." The paragraph beginning at line 46 of column 5 in Buxton teaches determining how to send the content. The following paragraph teaches that "If the receiver is trusted, then the original, unmodified content may be sent over a communications channel at block 104 to a receiver." This paragraph also teaches that "if it cannot be verified that the receiver is trusted, then the component applies the mask to generate "content after mask applied" (CAMA) data at block 108. The CAMA data is then sent over a communications channel to a receiver at block 110." This clearly and explicitly shows the distributor making a determination of how to send the content based on the rights of the user. In the claim, the rights may be as simple as a single flag, stating whether the user is trusted or untrusted. If the user/receiver is trusted, the original content can be sent. If the user/receiver is untrusted, the original content cannot be sent, but rather, only a modified version can be sent. It is further noted that claim 47 is not even this specific, as claim 47 does not make any determination based on the indication of rights of the user as to what content can be sent. The indication of user rights is merely part of the profile, and another part of the profile could be used in determining the subset of complementary information to be transmitted. As described above, Kalra clearly and explicitly teaches accessing a data profile and determining, based on the data profile, the subset of the complementary information to be transmitted to the target equipment. Kalra teaches that this profile is built based on characteristics of the client system. In the combination, such characteristics of the client system clearly includes the trusted/untrusted status of Buxton. Therefore, the profile of the combination includes such status, which is an indication of rights of a user to access content of the stream.

Continuation of 13. Other: The claims would be rejected just as before, with the addition that claims 47 and 56 would be rejected as the combination of claims 43, 44, and 47 were previously (it is noted that the set of claim 56 never had the final limitation added to claim 57, however, this limitation being rejected in claim 47 previously, one can just view the rejection of claim 47 as well as previous claims 56 and 57). With respect to claim 64, the playback device and memory device were previously rejected in claims 65 and 66, so one may look to the rejections of those claims for the "at least one item" portion.